

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM L. HICKEY,
on behalf of himself and all
others similarly situated,

Plaintiff,

v.

Case No.: 05-735-JJF

VERIZON COMMUNICATIONS INC.,
a Delaware corporation,

Defendant.

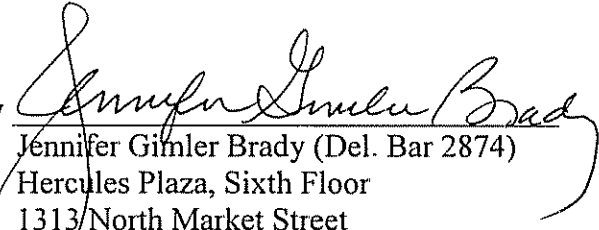
**DEFENDANT'S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendant Verizon Communications Inc. respectfully moves the Court to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted.

The grounds for the motion are that (1) the complaint does not allege a breach of fiduciary duty because an employer does not act as a fiduciary under ERISA when it makes decisions as to the design of a benefit plan, and (2) an alleged violation of the ADEA does not state a claim under ERISA § 502(a)(3) for which relief can be granted.

Verizon's brief in support of its motion to dismiss is being filed contemporaneously herewith.

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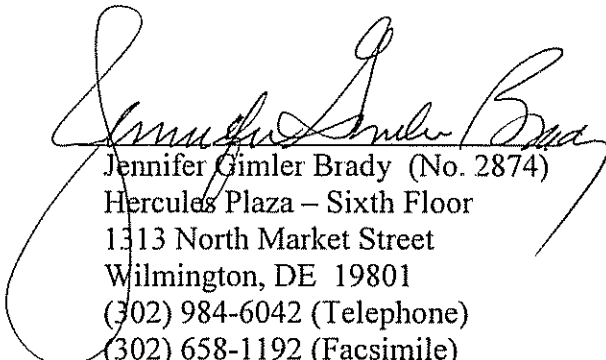
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Dated: December 5, 2005
PA&C-709956v1

CERTIFICATE OF SERVICE

I, Jennifer Gimler Brady, hereby certify this 5th day of December, 2005, that the foregoing **DEFENDANT'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)** was electronically filed with U.S. District Court District of Delaware via CM/ECF (Official Court Electronic Document Filing System) which will send notification of such filing that the document is available for viewing and downloading via CM/ECF to the following counsel of record:

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